

FEB 17 2004

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINABRENDA K. ARGOE, CLERK  
United States Bankruptcy Court  
Columbia, South Carolina (30)

IN RE:

Richard Jerome Breibart,

Debtor.

C/A No. 03-07440-W

Chapter 7

**ENTERED**

FEB 17 2004

**D.L.L.**

THIS MATTER comes before the Court upon Mary Breibart's ("Creditor") Amended Motion Seeking 11 U.S.C. § 362<sup>1</sup> Relief ("Motion") and Richard Breibart's ("Debtor") Objection to Amended Motion Seeking § 362 Relief ("Objection").

Pursuant § 362(d)(1) and § 362(d)(2), Creditor, who is the ex-wife of Debtor, seeks relief from the automatic stay for cause in order to bring an action in state court to determine the non-dischargeability of Debtor's obligations under federal bankruptcy law. Debtor's obligations arise from provisions of a Decree of Divorce ("Decree") issued by the Family Court for the Eleventh Judicial Circuit of South Carolina on April 8, 1998. Creditor asserts that judicial economy dictates that the Court provide her with relief from the automatic stay since the state court, which has concurrent jurisdiction with the bankruptcy court on § 523(a)(5) issues, could determine whether the debt in question is non-dischargeable pursuant to § 523(a)(5) and then if the state court finds that the debt is non-dischargeable, immediately provide a remedy in the same proceeding. Furthermore, Creditor also contends that since Debtor's post-petition income is not a part of Debtor's bankruptcy estate, Creditor's state court action will not be an impediment to the administration of Debtor's Chapter 7 asset case.

Section 362(d) provides that, after notice and a hearing, a court can grant relief from the stay "for cause, including the lack of adequate protection of an interest in property of such party in

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<sup>1</sup> Further internal referenced to the Bankruptcy Code will be by section number only.

interest." 11 U.S.C. § 362(d). A bankruptcy judge has broad discretion to determine what constitutes "cause" sufficient to warrant relief from the stay. Central Fidelity Bank v. Coogan (In re Coogan), No. 85-2299, 1986 WL 17896 at \*1 (4th Cir. 1986).

Currently, the administration of Debtor's Chapter 7 asset case is ongoing, and the Court is concerned with collateral effects arising from state court litigation that may interfere with the administration of Debtor's case. Debtor has also raised issues concerning the effect of Creditor's failure to timely file a proof of claim in his case. Since determining the effect of filing a proof claim is a core proceeding within the purview of a bankruptcy court's jurisdiction, see 11 U.S.C. § 157(b)(2)(B), this Court rather than a state court is best suited to address Debtor's concerns. Generally in § 523(a)(5) cases, either this Court or a state court must apply federal law to interpret the final family court order entered in 1998 and examine the parties' financial condition at that time. This Court moves quickly in such matters and has established a body of precedent on which both parties may rely.

Furthermore, this case is distinguishable from In re Dole, C/A No. 96-77677-W, slip. op. (Bankr. D.S.C. Feb. 20, 1997). In Dole, the Court provided relief from stay in light of the parties' ongoing family court litigation and the need for the state court's expertise in applying state domestic relations law. In re Dole, C/A No. 96-77677-W, slip. op. at 3. However, in this case, Debtor and Creditor's initial domestic relations litigation is no longer pending before the state court. The parties' dispute is premised on enforcement of the family court order entered in 1998; and thus, the parties no longer require state domestic relations law to establish their rights since such rights have been determined and expressed in the family court's final order. In light of such attendant circumstances, the Court does not find sufficient cause to provide Creditor with relief from the

automatic stay. Therefore, Creditor's Motion is denied. Cf. In re Ackerman, 194 B.R. 404, 405-06 (Bankr. D.S.C. 1996) (finding that an issue of fraudulent conveyance raised by the Trustee in Debtor's case would be best addressed by bankruptcy court).

**AND IT IS SO ORDERED.**

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
February 17, 2004.